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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

STOP SYAR EXPANSION, et al.

Plaintiffs and Appellants,

v.

SYAR INDUSTRIES, INC.,

Defendant and Respondent.

A155669

(Napa County
Super. Ct. No.
16CV001015)

Plaintiffs and appellants have long opposed the efforts of defendant and respondent Syar Industries, Inc. to expand its quarry operation. They filed the instant lawsuit after Napa County completed its review under the California Environmental Quality Act, approved the project, and issued Syar a permit.

The case was eventually resolved through plaintiffs' acceptance of Code of Civil Procedure section 998 offers¹ and entry of a judgment of dismissal with prejudice.

The afternoon prior to filing the judgment, the trial court held a lengthy hearing that addressed, first, plaintiffs' pending motion to enforce a

¹ All further statutory references are to the Code of Civil Procedure unless otherwise specified. Because the offers to the four plaintiffs were identical, we collectively refer to the offers as "the section 998 offer."

prior discovery order, which the court denied, and secondly, the form of the judgment, including the wording of statutory findings required in a judgment resolving a Proposition 65 claim. Plaintiffs have no quarrel with the form of the judgment. Rather, they challenge the court's denial of their motion to enforce one of the rulings in the prior discovery order.

Syar initially contends we have no appellate jurisdiction because the trial court denied plaintiffs' motion to enforce before entering the judgment of dismissal, and a judgment of dismissal entered pursuant to acceptance of a section 988 offer is not appealable. Thus, Syar concludes the general rule—that an appellant may challenge prejudgment rulings on appeal from a judgment—is inapplicable. Syar secondly contends the trial court properly denied plaintiffs' motion to enforce its prior discovery ruling.

We conclude we have appellate jurisdiction. We also affirm the trial court's order denying plaintiffs' motion to enforce a prior discovery ruling.

DISCUSSION

Appellate Jurisdiction

In their notice of appeal, plaintiffs stated they were appealing from a post-judgment order. They said the same thing in their appellants' opening brief.

Syar pointed out in its respondent's brief that the challenged order was, in fact, entered prior to the entry of the judgment of dismissal. It further pointed out a judgment of dismissal entered pursuant to acceptance of a section 998 offer is generally not appealable. It therefore asserted the pre-judgment order could not be reviewed on appeal as either a post-judgment order or in conjunction with an appeal from the judgment of dismissal. (See e.g., *Pazderka v. Caballeros Dimas Alang, Inc.* (1998) 62 Cal.App.4th 658,

667-668 [section 998 judgment not appealable because it is a ministerial act following the filing of the offer and acceptance].)

In their reply brief, plaintiffs maintained their appeal could, and should, be deemed to be from the subsequently entered judgment of dismissal, thereby allowing them to challenge the pre-judgment order. While plaintiffs acknowledged a judgment of dismissal entered pursuant to acceptance of a section 998 offer generally cannot be challenged on appeal, they pointed out there is a well-established exception—where adjudicatory action is taken by the court in connection with entry of the judgment. (See, e.g., *Bias v. Wright* (2002) 103 Cal.App.4th 811, 816-822 [where dispute as to whether section 998 offer was accepted arose before entry of judgment and defendant moved to enforce the agreement, and court held a hearing and considered moving and opposing papers before entering judgment, judgment was not ministerial and instead followed adjudicatory action and was appealable].)

We have no difficulty concluding this exception applies here. The trial court held a two and a half-hour hearing to hash out the wording of the judgment. Much of the hearing was devoted to exactly how the three findings required in a Proposition 65 judgment should be phrased. Ultimately, the court and the parties agreed upon language they all felt was acceptable and in compliance with the statutory requirement. This, alone, makes the general section 998 dismissal non-appealability rule, inapplicable.

More importantly for our purposes, the court and parties also expressly addressed whether entry of the judgment would foreclose plaintiffs from challenging on appeal the court's denial of their motion to enforce the prior discovery ruling. Syar's attorney initially expressed concern about leaving the door open for plaintiffs to appeal the denial order, and suggested Syar

would withdraw its own pending sanctions motion to bring an end to any further litigation. The court therefore suggested Syar's motion could be advanced to the present hearing date and denied in light of the court's denial of plaintiffs' motion to enforce. This, said the court, "would preserve your right to appeal as well." Syar's counsel expressed agreement with this suggestion: "I'm comfortable agreeing to just kind of mutual concept of releasing everything just in an effort to resolve this. If they want to file an appeal to the [C]ourt of [A]ppeal on the Court's ruling here, I'll defend the Court's ruling up on appeal and whatever happens, happens." Later in the hearing, plaintiffs' counsel objected to any "consent" language in the judgment, again stating plaintiffs had not yet decided whether to appeal the court's denial of their motion to enforce the prior discovery ruling. Syar's attorney stated, "I'm prepared to stipulate to the extent they issue [*sic*] to pursue an appeal on any issue ordered by this court, the entry of this judgment is not going to operate as a bar in any way shape or form. They're free to exercise any rights they think they have." The court accordingly added the following language to the judgment: "All issues between the parties concerning fees and costs have been resolved, including the issues raised by Syar's motions for sanctions. There shall be no post-judgment award of fees and costs to any party, without prejudice to appellate rights."

While certainly, as Syar points out, appellate jurisdiction cannot be conferred by stipulation of the parties, that is not why we have quoted some of the colloquy between counsel and the court. Rather, it is to illustrate that the judgment of dismissal entered in this case was far from a "ministerial" act that could have as easily been performed by the clerk, as the court. It accordingly comes within the recognized "exception" to the general rule that section 998 judgments of dismissal are not appealable.

We therefore proceed to the merits of plaintiffs' appeal challenging the court's order denying their motion to enforce an earlier discovery ruling.

Plaintiffs' Motion to Enforce a Prior Discovery Ruling

Background

The record reflects a long and contentious history of discovery in this case, which we summarize only in pertinent part.

In 2017, Syar asked for the production of documents, including e-mails. The bulk of the documents plaintiffs produced in response were public records. Syar found the lack of e-mails surprising, and at a deposition in February 2018, inquired about e-mails. The witness stated he had supplied them to counsel. Plaintiffs' counsel did not dispute deponents had provided counsel with responsive e-mails, and told Syar the lack of e-mails was due to "an error in the transmission of electronic files." Plaintiffs soon filed a motion to quash, as to which the parties met and conferred, and Syar agreed to narrow its document requests. The parties also agreed to a continuance of other depositions to try to facilitate the production. During this time, plaintiffs and Syar were also in a dispute over whether Syar had fully responded to plaintiffs' request for documents.

In March, plaintiffs, having yet to produce any of the e-mails, filed an ex parte application for a protective order. The court denied their ex parte request, specified the scope of production, and ordered the e-mails produced on a rolling basis. The court also set a hearing on the need for a protective order and stayed all depositions. It cautioned plaintiffs to be prepared to "immediately" produce the documents if the court denied a protective order.

Plaintiffs then filed an amended noticed motion for a protective order, claiming producing the e-mails would violate their First Amendment associational rights. They also complained about the cost of reviewing and

redacting what they described as “approximately 40,000 potentially responsive emails.” And they asked the court, among other things, to “allocate the expense of discovery to Syar.”

In support of their motion, plaintiffs submitted an estimate from Robert Half Legal Services of \$90,000 to review the e-mails. At the hearing, plaintiffs stated the cost to redact “private and associational information is extraordinary.” The trial court commented it was “not sure what that \$90,000 really covers,” and at one point asked Syar if it was worth \$90,000 to Syar to obtain the e-mails. Syar said “[q]uite possibly” given that plaintiffs were “seeking, an injunction of Syar’s facilities.” Syar was also amenable to suggestions to further narrow production and suggested redaction costs could be dealt with through some kind of protective order. The court and the parties also discussed the continuing dispute over whether Syar had fully responded to plaintiffs’ requests for production. The court ultimately commented no motion was before it and told the parties to meet and confer.

The court took the pending motion under submission and two days later, on April 20, issued a written order. The court reiterated the scope of the production set forth in the court’s March order, with some additional limitations. “[T]o additionally ease the burden” on plaintiffs, the court directed that “Syar shall pay Robert Half Legal for the cost of searching the emails without prejudice to Syar moving to collect the cost of that search at the end of this litigation.” The court further ordered the e-mails would not be redacted, but could be used only in the instant lawsuit, and ordered that plaintiffs had an additional 30 days to produce the documents. The court denied plaintiffs’ request for a protective order, commenting their “assertion that responding to discovery will chill speech is vastly overblown.” The court

also denied plaintiffs' request for sanctions for Syar's filing of an oversized opposition memorandum.

Within days, the parties were meeting and conferring about the April 20 order, including how attorney-client communications would be treated. Throughout these discussions, Syar took issue with the cost plaintiffs had represented would be associated with production, pointing out the court had ordered the e-mails produced without redaction but the estimate plaintiffs had provided included redaction, and that the shifted cost was only for "searching," and not for all Robert Half Legal services. Syar also asked for an itemized estimate from Robert Half Legal, but never received one. The parties did, however, come to an agreement as to some production protocols, including that plaintiffs would prepare a privilege log for attorney-client communications.

Plaintiffs failed to produce the e-mails within 30 days (i.e., by May 21) as ordered by the court.

A week later, on May 29, Syar filed a motion to compel compliance with the ordered production and for its costs, with a hearing set for mid-July. Syar therein also asked the court to vacate the initial cost-shifting allocation.

The following day, on May 30, Syar made section 998 offers to each of the plaintiffs. The offers stated:

"The terms and conditions of the offer are as follows: In exchange for an entry of a Request for Dismissal with Prejudice of all claims asserted against Syar by Plaintiff Stop Syar Expansion (You or Your), Syar shall pay You \$5,000. Said sum is in satisfaction of all claims and causes of action that were or could have been asserted, and any damages, penalties, costs, expenses, interest, and attorneys' fees sought in the above-captioned action."

Thus, the state of affairs, as of the time these offers were made, was as follows: plaintiffs had produced no e-mails, plaintiffs had not provided Syar

with any itemized estimate, or any invoice, from Robert Half Legal, the parties were not in agreement as to the Robert Half Legal charges shifted under the April 20 order, and Syar's motion for compliance with the April 20 production order (which included a request that the court vacate the initial cost shifting) was pending, as were two motions by plaintiffs—to continue the trial date and to compel further responses to their document requests.

Four days later, on June 4, plaintiffs filed an original writ proceeding in this court challenging the April 20 order as impairing their constitutional association rights. We summarily denied their writ petition on June 8, pointing out plaintiffs had been dilatory in seeking relief, as their time to comply with the ordered production had expired and it appeared they had “simply chosen not to comply with the challenged order.”

In the meantime, Syar had resumed depositions, and between June 1 and June 11 deposed several witnesses, none of whom produced their e-mails. This resulted in further exchanges as to whether plaintiffs had complied with the April 20 production order.

On June 23, Syar filed a motion to enforce the deposition subpoenas and sought issue sanctions and monetary sanctions of \$100,000 in light of what it perceived to be plaintiffs' continuing refusal to produce the documents as ordered by the trial court.

By June 25, all four plaintiffs had accepted the section 998 offer.

Thus, at the point all plaintiffs accepted Syar's section 998 offer, the state of affairs was as follows: plaintiffs had produced some e-mails (5,000) but not near the number they had indicated two months earlier were potentially responsive (more than 40,000), plaintiffs had acknowledged additional documents needed to be reviewed and produced, plaintiffs had not provided Syar with any itemized estimate, or invoice, from Robert Half Legal,

the extent of the Robert Half Legal cost shifting remained unresolved, Syar's motion for compliance with the April 20 production order (which included a request to vacate the initial cost-shifting) was set for hearing, and Syar's motion to enforce the deposition subpoenas and for \$100,000 in monetary sanctions was set for hearing, as were plaintiffs' motions for a trial continuance and to require further responses by Syar to their production requests.

Syar filed a notice of acceptance of the section 998 offers with the court the following day, on June 26, and suggested a hearing be set on dismissal within 45 days (to allow the Attorney General to provide any comments since the settled claims included Proposition 65 claims).

The next day, on June 27, plaintiffs filed a "Notice of Settlement of Entire Case," stating the entire case had been settled, and each plaintiff filed a Judicial Council form requesting dismissal with prejudice. Plaintiffs additionally filed a motion for dismissal of the case with prejudice, noticed for July 24.

The same day, June 27, plaintiffs sent Syar the first of several Robert Half Legal invoices, totaling approximately \$61,000. Syar refused to pay the invoices, taking the position the case had settled and all claims and issues between the parties had been resolved.

A week later, plaintiffs filed a second motion to dismiss the case with prejudice, providing additional information that counsel had spoken with the Attorney General's office and it requested the court follow statutory Proposition 65 settlement procedures. This motion was set for hearing August 30.

The following week, plaintiffs filed two motions—a motion to strike Syar's re-filed motion for sanctions and their own motion to enforce the

court's April 20 discovery order. Both were set for hearing on August 17, the date of the OSC hearing on a judgment of dismissal. The gist of plaintiffs' motion to enforce the April 20 order was that Syar had wrongfully refused to pay the Robert Half Legal invoices counsel forwarded two days after plaintiffs accepted Syar's section 998 offer (and after plaintiffs filed their "Notice of Settlement of Entire Case," form requests for dismissal, and their motion to dismiss the case with prejudice). Plaintiffs claimed that "upon settlement, the obligations of both parties 'locked in'" and therefore Syar was required to pay the invoices in accordance with the April 20 order. The settlement, said plaintiffs, "does not address the April 20 Order, which has survived the settlement because it no longer represents a cost 'sought' but is instead a cost already awarded by the Court."

Syar opposed plaintiffs' motion to enforce on the ground the settlement resolved all claims between the parties, including whatever claim plaintiffs had under the April 20 order to have Robert Half Legal charges initially paid by Syar. It also asserted plaintiffs' motion should be denied because plaintiffs were in "[w]illful[]" and continuing violation of the court's March and April production orders. It additionally maintained that, at the very least, there should be an offset of Syar's own costs incurred in connection with plaintiffs' continued failure to produce the e-mails.

The trial court subsequently reset the hearing on plaintiffs' motion to strike Syar's refiled motion to enforce the deposition subpoenas and for sanctions and plaintiffs' motion to enforce the April 20 order, to August 29, and maintained the hearing date of August 30 on plaintiffs' motion for dismissal with prejudice.

On August 28, the court issued a lengthy tentative ruling denying plaintiffs' motion to enforce the April 20 order. Whether the acceptance of

the section 998 offer foreclosed plaintiffs' motion, said the court, was a "matter of contract interpretation." It then rejected their claim that because the statutory offer failed to specifically identify the initial cost shifting provided for by the April 20 order, these costs were excepted from the general release language of the statutory offer. "Plaintiffs' position is not well-taken because their interpretation of the release is not reasonably susceptible to the meaning they advance." "[A]n offer that expressly settles all claims, penalties, costs, and expenses cannot reasonably be interpreted as not including the expenses and costs plaintiffs incurred before they signed the section 998 offer or the release of Syar's obligation to pay the cost penalty."

As for plaintiffs' claim it would be "unfair" for them to bear the Robert Half Legal charges, the court pointed out this ignored the plain language of the offer and plaintiffs "could have rejected the section 998 offer as insufficient to cover the Robert Half Legal expenses and costs they had incurred but Syar had not yet paid." Further, plaintiffs had received the section 998 offer May 30 and could have clarified the scope of the release with Syar. But "[t]hey did neither." "Plaintiffs instead waited nearly a month and then signed a broad general release for a total of \$20,000 barring, as noted, any 'claims' and 'penalties, costs, [and] expenses,' based on conduct occurring before its effective date." The court declined to "re-write" the terms of the settlement offer and ruled it was meant to be "a final resolution of all issues."

The court additionally pointed out "what would be unfair and unjust" would be "to interrupt the fulfillment of" the April 20 order, which contemplated "a potential recoupment by Syar of the Robert Half Legal costs." Thus, while the order required Syar to front the costs, it also allowed Syar to later file a motion to recover them. "Yet plaintiffs would deny Syar that opportunity and upend the intent of the order." This "soldifie[d]" the

court's view the Robert Half Legal cost issue "was an open claim that could have gone either way."

The court concluded its reading of the section 998 release language was consistent with the purpose of general release language, and plaintiffs' interpretation was "far too narrow and defeat[ed] the purpose behind the release by continuing the litigation based on actions occurring prior to the acceptance of the offer."

Although not before it, the court also observed Syar's motion to enforce the deposition subpoenas and for issue and monetary sanctions was "improper for the same reasons." Finally, the court required the parties to appear to discuss the plaintiffs' motion for dismissal with prejudice.

The parties duly appeared the following day. Plaintiffs did not contest the court's tentative ruling on their motion to enforce the April 20 order, and advised the court, as we have recited above, that they had not yet decided whether to appeal the ruling. The remainder of the hearing was devoted to settling the exact language of the judgment of dismissal.

The Section 998 Offer

The case law concerning the substance of section 998 offers has largely been developed in the context of determining whether a party who rejects an offer is thereby subject to the punitive provisions of the statute following a judgment less favorable than the pretrial settlement offer. In this context, the party who made the statutory offer has "the burden of demonstrating that the offer is a valid one under section 998," and the offer "must be strictly construed in favor of the party sought to be subjected to its operation." (*Sanford v. Rasnick* (2016) 246 Cal.App.4th 1121, 1129 (*Sanford*)). That said, a court will not interpret a section 998 offer "to honor form over substance." (*Prince v. Invensure Ins. Brokers, Inc.* (2018) 23

Cal.App.5th 614, 622 (*Prince*).) The offer must be unconditional (*Sanford*, at p. 1129), and its terms must be sufficiently specific “to permit the recipient meaningfully to evaluate it and make a reasoned decision whether to accept it, or reject it and bear the risk he may have to shoulder his opponent’s litigation costs and expenses.” (*Berg v. Darden* (2004) 120 Cal.App.4th 721, 727.)

It is now well-established that a statutory offer can request, in exchange for the payment of a specific amount, the execution of a release. (E.g., *Calvo Fisher & Jacob LLP v. Lujan* (2015) 234 Cal.App.4th 608, 628 [offer required execution of “a General Release in favor of [offering party] of all claims between [the two parties] in this action”]; *Linthicum v. Butterfield* (2009) 175 Cal.App.4th 259, 270 (*Linthicum*) [offer required “mutual release of all current claims”]; *Goodstein v. Bank of San Pedro* (1994) 27 Cal.App.4th 899, 905 [offer required “ ‘execution and transmittal of a General Release’ ”]; see *Sanford, supra*, 246 Cal.App.4th at p. 1130 [while statutory offer can ask for execution of a release, it cannot ask for execution of a “settlement agreement” as the terms of such can vary widely].) Thus, the courts have rejected claims that such a provision renders a statutory offer “ambiguous” because “the parties would be left to ‘fight over the terms of the “General Release.” ’ ”² (*Calvo*, at p. 630.)

² A section 998 offer cannot ask, however, for a release of claims beyond the scope of the pending litigation. “Th[is] limitation exists because of the difficulty in calculating whether a jury award is more or less favorable than a settlement offer when the jury’s award encompasses claims that are not one and the same with those the offer covers.” (*Chen v. Interinsurance Exchange of the Automobile Club* (2008) 164 Cal.App.4th 117, 121; *Id.* at pp. 119-120, 122 [because the plaintiff insured had, in addition to the two property damage insurance claims being litigated, a third pending claim against the defendant, defendant’s section 998 offer requiring execution of a

Here, plaintiffs have never claimed Syar’s section 998 offer was ambiguous and therefore invalid. Rather, they claim the trial court misapplied the “plain language” of the offer and, specifically its release language, as including the disputed Robert Half Legal charges. While this disclaimer of any claim of ambiguity has a certain angels-dancing-on-the-head-of-a-pin quality, we are, in any case, confronted with essentially an issue of “contract” interpretation. (See *Linton v. County of Contra Costa* (2019) 31 Cal.App.5th 628, 635 (*Linton*) [statutory offer and acceptance process is contractual].) And in resolving this issue, we can, and should, look to general principles of contract interpretation. (*Id.* at p. 636 [general contract principles apply when they neither conflict with nor defeat section 998’s purpose to encourage the settlement of lawsuits before trial]; *Timed Out LLC v. 13359 Corp.* (2018) 21 Cal.App.5th 933, 942 [“contract principles of interpretation apply to interpreting section 998 offers”].) This includes authorities concerning the import of releases. Plaintiffs’ assertion that such cases are inapposite because a section 998 offer is not a release and Syar’s offer did not ask for the execution of a release, misses the mark. True, a statutory offer is not, itself, a release. Nevertheless, such offers almost invariably contain some form of release language and where, as here, it is *that* language that is in dispute, we fail to see why cases addressing such language may not be of assistance.³

“‘general release of all claims’” was, under the particular circumstances, “ambiguous” rendering the statutory offer invalid].)

³ We review the trial court’s ruling as to the scope of the release language de novo. (See *Linton, supra*, 31 Cal.App.5th at p. 635 [“Where contract interpretation does not involve credibility determinations regarding extrinsic evidence, we apply de novo review on appeal.”].) Syar’s assertion that the abuse of discretion standard applies because plaintiffs are challenging a “discovery” order, ignores the nature of the issue on appeal—

The release language, as we have recited, stated as follows: “Said sum [\$5,000 per plaintiff] is in satisfaction of *all* claims and causes of action that were or could have been asserted, and *any* damages, penalties, *costs*, *expenses*, interest, and attorneys’ fees sought in the above-captioned action.” (Italics added.)

As was the trial court, we are hard pressed to see how this language could reasonably be understood as embracing every other issue arising out of the parties’ pre-acceptance conduct, but not the Robert Half Legal charges. We observe that the release language in Syar’s section 998 offer was broader than the language in the cases cited above holding section 998 offers may require the execution of a general release. The release language here specified that Syar’s payment of the specified sum was in satisfaction of “all” claims and causes of action that were or could have been asserted, and “any” damages, penalties, costs, expenses, interest, and attorney fees “sought” in the case. Thus, on its face, the offer by all objective accounts was intended to, and if accepted would, resolve any and all outstanding issues between the parties and bring the litigation to a close—accomplishing the goal and objective of section 998.

Plaintiffs maintain the “plain language” does not encompass the Robert Half Legal charges, pointing to the general principles we have recited above that the language of the section 998 offer must be construed against Syar as its proponent, and in favor of plaintiffs as the parties “‘sought to be subjected’” to its terms. They also point to the “‘fundamental principle’” of contract construction that words should be given their “‘usual and ordinary meaning.’”[’] Even assuming the cited general section 998 principles apply

whether the release language in its section 998 offer included the Robert Half Legal charges.

since plaintiffs are not contesting the validity of the statutory offer and Syar is not attempting to subject them to the statutory penalty that ensues when such an offer is rejected, we see no basis for construing the release language against Syar. The language is broad, and the case law reflects a general understanding that such language is meant to affect a complete resolution of the case. Indeed, as *Sanford* reflects, such release language, which does not render a statutory offer ambiguous, stands in contrast to language requiring execution of a “settlement agreement.” Unlike standard release language, language requiring a “‘settlement agreement,’” would “‘generate scores of appeals of trial court rulings on post-trial cost motions.’” (*Sanford, supra*, 246 Cal.App.4th at p. 1132.) The court declined to “‘open a Pandora’s box of post-trial litigation and appeals by injecting needless uncertainty and inviting gamesmanship into what is a relatively settled area of the law.’” (*Ibid.*) Here, Syar included, as a condition of the offer, only standard release language, and in doing so, did not inject uncertainty into the statutory offer.

In fact, plaintiffs concede the Robert Half Legal charges could be considered “‘expenses’”—but then assert these were expenses they never “sought in the . . . action” because the expenses were not specifically sought in the prayer of their complaint. We need only point out the release language speaks in terms of any costs and expenses sought “in the action,” not in the prayer of the complaint.

They further claim that at the time of the section 998 offer, “the [Robert] Half [Legal] charges had yet to be liquidated but the understanding of the parties was they would amount to about \$90,0000,” and because Syar could potentially seek reimbursement, it was Syar, not plaintiffs, who “sought” these expenses. To begin with, the record is clear that Syar did not share any such “understanding” as to the amount of the shifted Robert Half

Legal charges. Rather, Syar continually challenged that number, and as of the time Syar made its section 998 offer, the parties were not in agreement as to amount of Robert Half Legal charges that had been shifted. Further, plaintiffs *did* seek these expenses *from Syar* when they expressly asked, in their motion, that the trial court allocate them to Syar. And once the court did so, they had a claim *against Syar* for their payment, the amount of which was in dispute.

Plaintiffs similarly claim the April 20 ruling “imposed a present obligation on Syar” to pay the Robert Half Legal charges, which obligation “survive[d],” and was not compromised and resolved by, the section 998 offer. They maintain that by accepting the section 998 offer, they became the “prevailing parties” in the lawsuit and Syar, in turn, was then foreclosed from recovering the charges under the discretionary cost provisions of section 1033.5. However, this assertion misses the salient point in terms of the settlement offer—that at the time Syar made the section 998 offer, *which* party would ultimately prevail was *unknown*, and therefore *which* party would be in a position to seek costs under section 1033.5 was also *unknown*. There was, in short, risk on both sides as to who would ultimately bear the Robert Half Legal charges.

Furthermore, the trial court initially shifted the Robert Half Legal charges to Syar presumably pursuant to section 2031.06, subdivision (e), which authorizes trial courts, on finding production of electronic documents would entail undue burden or expense, to allocate the costs of the discovery. (The court did not cite to any code section pertaining to discovery in its April 20 order.) Trial courts have great discretion in managing discovery and in equitably sorting out discovery disputes. (See *O&C Creditors Group, LLC v. Stephens & Stephens XII, LLC* (2019) 42 Cal.App.5th 546, 561

[“ “[m]anagement of discovery lies within the sound discretion of the trial court” ’ ”].) They also have inherent power to sua sponte revisit their own interim rulings. (See *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1108 [while statutory constraints can be imposed on a party’s ability to ask a trial court to reconsider a ruling, such constraints cannot be imposed on a court’s judicial authority to reconsider a ruling in light of new circumstances].) We therefore see no reason why a trial court cannot revisit a cost-shifting discovery ruling if, for example, the actual burden of production is not as earlier represented to the court.

In addition, Syar urged the trial court to shift the Robert Half Legal charges back to plaintiffs both in its pre-section 998 offer motion to compel the e-mail production ordered by the court in its April 20 order, and in its motion filed before plaintiffs’ acceptance of the section 998 offer to enforce the deposition subpoenas. Indeed, at the conference on August 16 addressing the scheduling of the pending motions, the court commented it was inclined to entertain Syar’s “request in connection with the motion to enforce to, say, offset it and say, no, they are only responsible for a portion of it.”

We therefore do not agree with plaintiffs that the initial cost-shifting ruling in the April 20 order was irretrievably cast in stone from that point forward.

Nor can the rest of the circumstances that existed at the time the section 998 offer was made be ignored, as plaintiffs seem to want to do. (See *Burch v. Children’s Hospital of Orange County Thrift Stores, Inc.* (2003) 109 Cal.App.4th 537, 547-548 (*Burch*) [validity of offer must be determined as of the time it was made, not as of the date of the subsequent judgment].) At the time Syar made the offer, plaintiffs had produced no e-mails, they had not provided Syar with an itemized estimate, or any invoices, from Robert Half

Legal, the parties were not in agreement as to the amount of Robert Half Legal charges that were shifted, plaintiffs' motions to continue the trial and for further responses to their production requests were pending, and Syar's motion for compliance with the April 20 production order (that also requested that the initial cost shifting be set aside) was pending. And before the time to accept the statutory offer expired and before plaintiffs accepted it, they had produced some e-mails but not near the number they had stated were at issue, they had acknowledged additional documents needed to be reviewed and produced, and Syar's additional motion to enforce the deposition subpoenas and for issue and monetary sanctions (and for removal of the cost shifting or, at the least, an offset) was pending.⁴ In short, at the time of the offer, both parties faced a great deal of uncertainty as to how the litigation would unfold. Plaintiffs also faced the risk, if they rejected the statutory offer, of having to pay all of Syar's costs from that point forward if the case proceeded and the result was less favorable to them than the settlement offer.

Plaintiffs also claim the trial court unfairly put the burden on them to ask whether the section 998 offer included the Robert Half Legal charges. Not so. The trial court grounded its order denying their motion to enforce the

⁴ While cases speak in terms of evaluating a statutory offer in light of the circumstances " 'at the time of the offer,' " the point being made is that the courts are not to evaluate those circumstances " 'by virtue of hindsight.' " (*Burch, supra*, 109 Cal.App.4th at p. 548.) The context at the time is pertinent to determining whether the offer was one that might be reasonably accepted and therefore can be said to have been made in good faith and thus valid. (*Ibid.*) Because plaintiffs are not taking issue with the *validity* of Syar's statutory offer, they effectively concede the offer was " 'realistically reasonable under the circumstances of the particular case' " and carried with it " 'some reasonable prospect of acceptance.' " (*Jones v. Dumrichob* (1998) 63 Cal.App.4th 1258, 1262.)

April 20 order on the language of the statutory offer. It was in response to plaintiffs' assertion it would be "unfair" if they ended up having to pay the Robert Half Legal charges, that the court observed that they could have clarified any perceived ambiguity in the section 998 offer by contacting Syar. As a bench guide notes, "[t]he offeree may seek clarification of an uncertain offer, and where the offeror's response removes the uncertainty, the offer is valid, and any subsequent determination of certainty following rejection of the offer is made in view of the offer as so clarified." (Thomas, Cal. Civil Courtroom Handbook & Desktop Reference (2020 ed.) ch. 23, § 23:29, citing *Prince*, *supra*, 23 Cal.App.5th at pp. 622-623.)

Finally, plaintiffs assert the trial court failed to appreciate that Syar made section 988 offers to each plaintiff, and had any one of them declined the offer, Syar would have remained subject to the April 20 cost-shifting ruling. They maintain that "[i]n assessing Syar's objectively manifested intent, an individual plaintiff evaluating the offer could not reasonably expect Syar's obligation to pay [Robert] Half [Legal] would be discharged if all plaintiffs accepted but not if only some of them did." This appears to be another way of asserting that the release language did not objectively and reasonably convey that all outstanding issues were being compromised and resolved, an assertion we have rejected. Moreover, it is doubtful Syar could have made a valid offer to the plaintiffs conditioned on acceptance by all. (*Williams v. The Pep Boys Manny Moe & Jack of California* (2018) 27 Cal.App.5th 225, 242-243.) That cannot mean that Syar could not legally make an offer to compromise all outstanding issues and claims and bring a halt to the litigation. Had any plaintiff refused the section 998 offer, the case would, indeed, have continued. But whether the cost-shifting ruling would have remained unchanged or been offset even before trial is, as we have

discussed, a matter of speculation. So too, is how the court would have ultimately sorted out who would bear the Robert Half Legal charges if Syar prevailed at trial against fewer than all plaintiffs.

Pared to its core, plaintiffs' claim is that the Robert Half Legal charges had to be specifically identified in the section 998 offer to come within the release language. This runs contrary to the general law pertaining to releases—that terms such as “all” or “any” ought to be construed inclusively. Otherwise, the party extending the settlement offer “‘would have to struggle to enumerate all claims’” the other might have, and therefore “‘would never be able to put a definitive end to the matter.’” (*Shine v. Williams-Sonoma, Inc.* (2018) 23 Cal.App.5th 1070, quoting *Villacres v. ABM Industries Inc.* (2010) 189 Cal.App.4th 562, 589.⁵) Thus, general releases “are not to be shorn of their efficiency by any narrow, technical and close construction. . . . If parties intend to leave some things open and unsettled, their intent so to do should be made manifest.’” (*Villacres*, at p. 589.) Here, the section 988 offer release language not only spoke broadly in terms of “all claims and causes of action that were or could have been asserted,” but also “any damages, penalties, costs, expenses, interest, and attorneys’ fees sought” in the case. We agree with the trial court the release language did not have to

⁵ Plaintiffs maintain *Villacres* is inapposite and the trial court erred in citing to it because the quoted language is in the appellate court’s discussion of whether the defendant, in settling a prior class action, preserved its right to raise a res judicata defense to subsequent litigation. While that was the context of the court’s discussion, the court did not suggest its observation about the difficulties in settling a case that would ensue from a requirement that every claim be specifically enumerated in a release, was pertinent only to a res judicata analysis or to releases in a class action settlement. (*Villacres v. ABM Industries Inc.*, *supra*, 189 Cal.App.4th at pp. 585-590 [discussion of “general” release language].)

go further and specifically identify the Robert Half Legal charges, as to which a number of issues remained outstanding, at the time of the settlement.

DISPOSITION

The judgment is AFFIRMED. Each party to bear its own costs on appeal.

Banke, J.

We concur:

Humes, P.J.

Margulies, J.

A155669, *Stop Syar Expansion v. Syar Industries, Inc.*